

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MARILYN DAVIS,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 07-451V

Special Master Christian J. Moran

Filed: March 10, 2010

Attorneys' fees and costs, interim
award, amount which is not disputed.

Ronald C. Homer, Esq., Conway, Homer & Chin-Caplan, P.C., Boston, MA, for petitioner;
Darryl R. Wishard, Esq., United States Department of Justice, Washington, D.C., for respondent.

UNPUBLISHED RULING ON INTERIM ATTORNEYS' FEES AND COSTS*

Marilyn Davis claims that the influenza vaccine caused her to suffer a condition caused neuromyelitis optica, which is also known as Devic's disease. Ms. Davis seeks compensation pursuant to the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-10 et seq. (2006). Her case remains pending. Ms. Davis is now awarded, on interim basis, attorneys' fees and costs in the amount of **\$85,000.00**. See Avera v. Sec'y of Health & Human Servs., 515 F.3d 1343, 1352 (Fed. Cir. 2008).

* Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

On February 8, 2010, Ms. Davis filed an application for an award of interim attorneys' fees and reimbursement of costs, seeking a total of \$89,740.65. On February 18, 2010, Ms. Davis filed an Amended Application for Interim Attorneys' Fees and Costs stating that respondent's counsel stated that he would not object to an award totaling \$85,000.00.

Ms. Davis is entitled to an award of attorneys' fees and costs because Ms. Davis brought her petition in good faith and there was a reasonable basis for the petition. See 42 U.S.C. § 300aa-15(e)(1). Furthermore, a review of the materials offered in support of the motion for interim attorneys' fees and costs indicates that the (reduced) requested amounts are reasonable. Therefore, Ms. Davis is awarded the amount to which respondent did not object. This decision awards Ms. Davis all the attorneys' fees and costs through the date of her application.

There is no just reason to delay the entry of judgment on interim attorneys' fees and costs. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in petitioner's favor for **\$85,000.00** in interim attorneys' fees and attorneys' costs. Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

IT IS SO ORDERED.

s/Christian J. Moran

Christian J. Moran
Special Master